

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DESTINY S.,

Claimant,

and

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. L 2006090151

DECISION

On November 1, 2006, in Torrance, California, Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Dolores Burlison, Director of Children's Services, represented Harbor Regional Center (Service Agency or HRC).

Chanel S., Claimant's adopting parent (Mom), represented Claimant.¹

On November 1, 2006, the record was closed and the matter was submitted. This Decision was due by November 23, 2006, by stipulation between the parties.

ISSUE

Did HRC properly assess Claimant's level of care in order to determine the Adoption Assistance Program (AAP) reimbursement her adopting parents would be entitled to receive?

¹ To protect Claimant's privacy and that of her family members, only the first initial of their last name will be used.

FACTUAL FINDINGS

1. Claimant is a nine year-old girl who is in the fourth grade. She attends a special education class for severely emotionally disturbed children. Claimant is performing at a first grade level. Claimant is a consumer of HRC services by virtue of her diagnosis of mild mental retardation. Mom is actually Claimant's great-aunt. Claimant's biological mother (Mom's niece) used drugs and lost custody of Claimant and Claimant's siblings.

2. Claimant was born with deficits likely due to prenatal drug and alcohol abuse by her biological mother. Claimant and her siblings were treated horribly while in the custody of their biological mother, sometimes having to eat rotten food.

3. Claimant is very aggressive and exhibits severe behaviors. She is constantly getting into trouble at school. Claimant has violent tantrums and "night terror" dreams which cause her, and her family, to be awake half the night approximately 50 percent of the time. Claimant needs to be monitored at all times; otherwise, she tends to run away and hide.

4. Mom would like to adopt² Claimant. Claimant resides with Mom, her husband, their two daughters, and Claimant's sister.

5. Mom requested that HRC issue an AAP rate letter so as to determine the level of financial support they will receive from the County when Claimant is adopted. HRC agreed to issue a Alternate Residential Model (ARM) rate letter in order to assist in the AAP benefit determination process.

6. In accordance with California Code of Regulations, title 22, section 35333, the AAP provides benefits to facilitate the adoption of children who otherwise would not likely be adopted. In the AAP system, a special needs child is entitled to a greater amount of financial support, known as the specialized care increment, from the county. If the child is a regional center client, she is entitled to a greater amount of financial support.

7. The AAP process works in this fashion. In determining the AAP rate of financial support for regional center AAP children, the responsible County Department of Social Services relies on the Department of Developmental Disabilities (DDS) residential facility rates. "If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the regional center using the facility rates established by the California Department of Developmental Services."³ Stated in the alternative, the responsible county will pay the adoptive family the amount of money that a regional center would otherwise pay to a licensed residential care facility if the consumer were placed in such a facility.

² The evidence was not clear on whether or not the adoption has become final.

³ California Code of Regulations, title 22, section 35333.

8. The ARM levels, and corresponding rates, can be described as follows: Levels 1, 2 (owner), 2 (staff), 3 (owner), 3 (staff), and 4A to 4I. The rates vary greatly. Pertinent to this case, Level 3 (owner)⁴ has a rate of \$2,006 per month. The rates increase gradually to a maximum of Level 4I, which equates to \$5,159 per month.

9. HRC initially recommended an ARM Level 2 rate (which equates to \$1,694 per month), and then changed its recommendation to an ARM Level 3 rate (which equates to \$2,006 per month). Mom was dissatisfied with the ARM rate determined by HRC and, on August 27, 2006, filed a Fair Hearing Request.

10. HRC contends that the ARM rates above Level 3 (owner) are only applicable to staff-operated facilities which are not similar to adoptive family situations. Therefore, it is HRC's current policy to not rate any consumer higher than Level 3 (owner). HRC did not consider any level of care above Level 3 (owner) for Claimant. HRC did not determine Claimant's level of care if Claimant were to be placed in a residential facility. HRC stated that, if placed in a residential facility, Claimant may need a Level 4A, or higher, level of care.

LEGAL CONCLUSIONS

1. The California Code of Regulations sets the parameters for determining the level of care for consumers placed in the community. "Service level means one of a series of 4 levels which has been approved for each facility by a regional center. Service levels 2, 3 and 4⁵ have a specified set of requirements that a facility must meet which addresses the direct supervision and special services for consumers within that facility."⁶ "Program Design" is defined as the "description of consumer services offered by a facility, the functional characteristics of the consumers the facility will serve, and the resources available to meet individual service needs consistent with the facility's service level."⁷

Title 17, California Code of Regulations, section 56013 further describes the consumers' "functional characteristics," as follows:

[¶] . . . [¶]

(c) . . . the program design for each facility applying for service level 3 approval shall include:

(1) A description of services designed to enhance the capabilities of consumers including those with:

(A) Significant deficits in self-help skills; and/or

⁴ "Owner" references a residence with no hired staff.

⁵ Each level then has subdivisions (a) to (i).

⁶ California Code of Regulations, title 17, section 56002, subdivision (a)(44).

⁷ California Code of Regulations, title 17, section 56002, subdivision (a)(30).

- (B) Some limitations in physical coordination and mobility; and/or
- (C) Disruptive or self-injurious behavior.

(d) . . . the program design for each facility applying for service level 4 approval shall include:

(1) A description of services designed to enhance the capabilities of consumers including those with:

- (A) Severe deficits in self-help skills; and/or
- (B) Severe impairment in physical coordination and mobility; and/or
- (C) Severely disruptive or self-injurious behavior.⁸

2. The dispute ranges between a level of care assessment of Level 3 (owner) and Level 4I; the former being HRC's present assessment and the latter being what Claimant contends is correct.

3. After having had the opportunity to fully evaluate all of the witnesses and documentary evidence, the ALJ concludes that HRC has not properly assessed Claimant's level of need. The AAP money that is paid by the County, not the regional center, is, in part, to encourage people to adopt children with special needs. The level of need determined by the regional center should be the level of need as if Claimant were placed in a residential facility. That is, the County then would pay the adopting family the same amount of money that would have been paid to place Claimant in a residential facility. HRC is solely looking at Claimant's present living situation. HRC even admitted that Claimant might be placed in a Level 4A facility, or higher, if she were placed in a residential facility. By its own admission, HRC has not fully assessed Claimant's level of care if Claimant were placed in a residential facility. For purposes of determining an ARM rate for AAP payment only, the Service Agency should simply assess the level of care that would be required if Claimant were to reside in a residential facility. Thus, HRC did not comply with the applicable law.

Further, HRC's policy is unfair. For example, consider a minor who presently resides in a residential facility with a Level 4a, or higher, level of care. If adoptive parents then wanted to adopt that child, and bring that child into their home, HRC would presently issue an ARM rate letter indicating that the child's level of care is a Level 3. This rate would not be accurate and would penalize the adoptive parents.

ORDER

The Harbor Regional Center shall issue a "rate" letter, within 30 days of the effective date of this decision, to the Los Angeles County of Department of Children and Family Services. That letter will state Claimant's level of care as if Claimant were to be placed in a residential facility. HRC shall not, in this case, continue to rely on its policy that a Level 3 (owner) rate is the highest allowable ARM rate. HRC may state in the letter that the level of care assessed is solely for the purposes of assessing Claimant in order to

⁸ California Code of Regulations, title 17, sections 56013(c) and (d).

determine an ARM rate for AAP purposes. If Claimant is dissatisfied with HRC's rate letter, Claimant has the right to request a fair hearing.

NOTICE

This is a final administrative decision. All parties are bound by this Decision. Any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days.

DATED: _____

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings